



House of Representatives

General Assembly

File No. 646

January Session, 2011

House Bill No. 6343

House of Representatives, April 27, 2011

The Committee on Judiciary reported through REP. FOX of the 146th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING COOPERATIVE HEALTH CARE ARRANGEMENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2011*) (a) As used in this
2 section:

3 (1) "Cooperative arrangement" means an agreement among two or
4 more health care providers for the purpose of sharing, allocating or
5 referring patients, personnel, instructional programs, support services
6 or facilities or medical, diagnostic or laboratory facilities or
7 procedures, or negotiating fees, prices or rates with managed care
8 organizations and includes, but is not limited to, a merger, acquisition
9 or joint venture of two or more health care providers, including, but
10 not limited to, physician practice groups;

11 (2) "Health care provider" means: (A) A physician licensed under
12 chapter 370 of the general statutes, (B) a chiropractor licensed under
13 chapter 372 of the general statutes, (C) a podiatrist licensed under

14 chapter 375 of the general statutes, (D) a natureopath licensed under
15 chapter 373 of the general statutes, or (E) an optometrist licensed under
16 chapter 380 of the general statutes;

17 (3) "Certificate of public advantage" means a certificate issued by the
18 Attorney General, that authorizes health care providers that are parties
19 to a cooperative arrangement to engage in conduct that could tend to
20 lessen competition in a relevant health care market, upon a showing
21 that such cooperative arrangement meets the criteria set forth in
22 subdivision (2) of subsection (c) of this section; and

23 (4) "Managed care organization" has the meaning set forth in section
24 38a-478 of the general statutes.

25 (b) The Attorney General may issue a certificate of public advantage
26 in accordance with this section. Any two or more health care providers
27 may apply to the Attorney General for a certificate of public advantage
28 to authorize a cooperative arrangement. The application shall include
29 (1) the name of the applicant or applicants, (2) a description of the
30 nature and scope of the cooperative arrangement, (3) a description of
31 any consideration passing to a party under the agreement, (4) evidence
32 in support of the criteria set forth in subdivision (2) of subsection (c) of
33 this section, and (5) such other information as the Attorney General
34 may require. Each application shall be accompanied by a fee of one
35 hundred dollars. Any information of a proprietary nature submitted in
36 such application that meets the standards set forth in subdivision (5),
37 (8) or (10) of subsection (b) of section 1-210 of the general statutes shall
38 be confidential and exempt from public disclosure.

39 (c) (1) The Attorney General shall review each application submitted
40 pursuant to subsection (b) of this section and, not later than ninety
41 days after receipt of such application, issue a written decision
42 approving or denying the application. The decision shall set forth the
43 Attorney General's findings with respect to the benefits and
44 disadvantages described in subdivision (2) of this subsection and a
45 conclusion as to whether the benefits outweigh the disadvantages to
46 the residents of this state. The Attorney General may conduct a

47 hearing, after giving notice to all interested parties, to obtain
48 information necessary in making such decision.

49 (2) In reviewing applications under this section, the Attorney
50 General shall consider the provisions of chapter 368z of the general
51 statutes concerning long-range health planning that the Attorney
52 General deems relevant to the application for a certificate of public
53 advantage, and any benefits of such cooperative arrangement,
54 including, but not limited to: (A) Enhancement of the quality of health
55 services to consumers; (B) gains in cost efficiency of providing health
56 services; (C) improvement in utilization of and access to health services
57 and equipment; and (D) avoidance of duplication of health care
58 resources. The Attorney General shall not approve an application for a
59 certificate of public advantage unless the Attorney General finds that
60 the benefits of the proposed cooperative arrangement outweigh the
61 disadvantages, including, but not limited to: (i) The potential reduction
62 in competition; (ii) the adverse impact on quality, access or price of
63 health care services to consumers; and (iii) the availability of
64 arrangements that achieve the same benefits with less restriction on
65 competition.

66 (3) Conduct by health care providers in furtherance of a cooperative
67 arrangement that has received a certificate of public advantage shall
68 not be subject to the provisions of chapter 624 of the general statutes,
69 except that the Attorney General may utilize the powers set forth in
70 section 35-42 of the general statutes when the Attorney General has
71 reason to believe that the approved cooperative arrangement is not
72 performing or providing services as described in the application or in
73 the annual progress report. This section shall not be construed to
74 require a health care provider to obtain a certificate of public
75 advantage in order to enter into a cooperative arrangement, and,
76 absent a certificate of public advantage, the legality of such cooperative
77 arrangement shall be determined by applicable antitrust law.

78 (4) Health care providers in a cooperative arrangement that has
79 received a certificate of public advantage pursuant to this section shall

80 submit an annual progress report to the Attorney General on a form
81 prescribed by the Attorney General. The report shall be accompanied
82 by a fee of one hundred dollars.

83 (5) The Attorney General shall actively supervise any cooperative
84 arrangement authorized pursuant to this section to determine whether
85 the conduct undertaken by the health care providers in furtherance of
86 the cooperative arrangement should continue to be authorized. The
87 Attorney General shall review such conduct through annual progress
88 reports submitted by the health care providers in a cooperative
89 arrangement in accordance with subdivision (4) of this subsection to
90 evaluate whether the conduct is consistent with the application and
91 whether the benefits continue to outweigh the disadvantages. If the
92 Attorney General has reason to believe that the likely benefits no
93 longer outweigh the disadvantages, the Attorney General shall notify
94 the holder of the certificate of public advantage and hold a hearing to
95 determine whether such certificate should be modified or revoked.
96 Such modification or revocation shall take effect ninety days from the
97 mailing of notice of a final decision by the Attorney General. The
98 Attorney General shall not modify or revoke a certificate of public
99 advantage more than three years after the initial issuance of such
100 certificate.

101 (d) Any health care provider denied a certificate of public advantage
102 by the Attorney General pursuant to this section and any holder of a
103 certificate of public advantage that has been modified or revoked by
104 the Attorney General pursuant to subdivision (5) of subsection (c) of
105 this section may appeal therefrom as if such denial, modification or
106 revocation were a contested case within the meaning of chapter 54 of
107 the general statutes.

108 (e) No managed care organization shall refuse to negotiate in good
109 faith with parties to a cooperative arrangement authorized by the
110 Attorney General. Any managed care organization that violates this
111 section shall be subject to a civil penalty of not more than twenty-five
112 thousand dollars per day for each violation. The Attorney General may

113 institute proceedings to enforce the provisions of this section in the
114 superior court for the judicial district of Hartford.

115 (f) A violation of subsection (e) of this section shall be deemed an
116 unfair or deceptive trade practice under chapter 735a of the general
117 statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	New section

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Attorney General	GF - Cost	555,000	555,000
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF - Cost	108,108	108,108
Attorney General; Consumer Protection, Dept.	Various Funds - Revenue Gain	Less than 50,000	Less than 50,000
Comptroller Misc. Accounts (Fringe Benefits) ¹	GF & TF - Potential Cost	Indeterminate	Indeterminate
Social Services, Dept.	GF - Potential Cost	Indeterminate	Indeterminate

Note: GF=General Fund; TF=Transportation Fund

Municipal Impact:

Municipalities	Effect	FY 12 \$	FY 13 \$
Various Municipalities	Potential Cost	Indeterminate	Indeterminate

Explanation

The bill results in an estimated annual cost of \$663,108 for four attorneys, one paralegal and one health care analyst in the Attorney General's office (AG) to certify and oversee authorized cooperative health care arrangements. This cost includes \$455,000 in Personal Services, \$25,000 in Other Expenses, \$75,000 in consultant fees and \$108,108 to provide fringe benefits. These employees would be necessary to review these arrangements and issue written decisions approving or denying applications for certificates of public advantage,

¹ The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated non-pension fringe benefit cost associated with personnel changes is 23.76% of payroll in FY 12 and FY 13. In addition, there could be an impact to potential liability for the applicable state pension funds.

which authorize health care providers to engage in conduct that could lessen health care competition. Hearings may be necessary to obtain background information. In addition, the AG must actively supervise authorized cooperative health care arrangements and review annual reports submitted by parties to authorized cooperative health care arrangements. It is anticipated that in excess of ten cooperative arrangements may occur.

The bill results in a potential revenue gain of less than \$50,000 as it requires managed care companies to negotiate in good faith with health care providers holding a certificate of public advantage issued by the AG. A company that fails to do so faces a daily \$25,000 civil fine and is in violation of the state's Unfair Trade Practices Act.

The state purchases healthcare services from insurers for individuals served by Medicaid and the state employee health plan. To the extent that the bill increases the cost of providers for which insurers procure services from, there may be an increased cost to the state. In addition, for the same reason identified, there may be an increased cost to municipalities to provide healthcare to the populations they serve.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and any violations of the bill's provisions.

OLR Bill Analysis**HB 6343****AN ACT CONCERNING COOPERATIVE HEALTH CARE ARRANGEMENTS.****SUMMARY:**

This bill authorizes health care providers – licensed (1) doctors, (2) chiropractors, (3) podiatrists, (4) naturopaths, and (5) optometrists – to enter into cooperative arrangements (CA) with each other to negotiate fees as a group with insurers and managed care organizations (MCO). They may apply to the attorney general for a certificate of public advantage, exempting them from state antitrust laws. Those who choose not to be certified may have to establish their legality under applicable antitrust law.

Under the bill, the attorney general must actively supervise all CAs, including those without a certificate of public advantage. It subjects MCOs to civil penalties for refusing to negotiate in good faith with certified CAs.

EFFECTIVE DATE: October 1, 2011

DEFINITIONS***Cooperative Arrangement***

Under the bill, a CA is an agreement among two or more health care providers for (1) sharing, allocating, or referring patients; personnel; instructional programs; support services; or facilities or (2) negotiating fees, prices, or rates with MCOs. It includes a merger, acquisition, or joint venture of two or more health care providers, including physician practice groups.

Certificate of Public Advantage

A “certificate of public advantage” is a certificate issued by the

attorney general authorizing health care providers that are parties to a CA to engage in conduct that could lessen competition in a relevant health care market. The criteria for determining if a CA could lessen competition include (1) the adverse impact the CA could have on quality, access, or price of health care to consumers and (2) whether other arrangements are available that could achieve the same benefits with less restriction on competition.

CERTIFICATE OF PUBLIC ADVANTAGE APPLICATIONS

Contents

Any two or more health care providers may pay a \$100 fee and apply to the attorney general for a certificate of public advantage. They must supply:

1. their name or names,
2. a description of the nature and scope of the CA,
3. a description of any contractual considerations passing to a party under the CA,
4. evidence showing the CA's benefits outweigh its disadvantages, and
5. any other information the attorney general requires.

Information that is proprietary under the state Freedom of Information Act is confidential and exempt from public disclosure.

Process

The attorney general must review all applications and issue a written decision approving or denying them within 90 days. After notifying all interested parties, he may conduct an information-gathering hearing.

His decision must state the benefits and disadvantages of the CA and his conclusion as to whether the benefits outweigh the disadvantages.

Considerations

Under the bill, the attorney general cannot approve a CA unless he finds that the benefits outweigh the disadvantages.

Benefits. Benefits include:

1. enhancement of the quality of health services to consumers,
2. gains in cost efficiency of providing services,
3. improvements in the use and access to services and equipment,
and
4. avoidance of resource duplication.

Disadvantages. Disadvantages include:

1. the potential reduction in competition;
2. the adverse impact on quality, access, or price of health care to consumers; and
3. the availability of arrangements that achieve the same benefits with less restriction on competition.

The attorney general must also consider the state's relevant statutory long-range health care plan in ruling on a CA's application.

ANTITRUST**Annual Progress Reports**

Under the bill, health care providers in certified CAs must submit annual progress reports on a form prescribed by the attorney general along with a \$100 fee. The attorney general must actively supervise certified CAs by reviewing their progress reports to evaluate whether their conduct is consistent with their application and whether the benefits continue to outweigh the disadvantages.

Revocation and Modification Hearings

If the attorney general determines that benefits no longer outweigh

the disadvantages, he must notify the certificate holder and hold a hearing to determine whether to modify or revoke the certificate of public advantage. He cannot revoke or modify a certificate more than three years after its initial issuance. (It is unclear what purpose a hearing would serve in this case.)

The modification or revocation takes effect 90 days from the date the attorney general mails notice of a final decision.

APPEALS

Any health care provider denied a certificate of public advantage or any certificate holder can appeal a certificate modification or revocation as if it were an action taken in a contested case hearing. This entitles it to an administrative hearing and, if it continues to be aggrieved, to a Superior Court appeal.

ANTITRUST LITIGATION

The bill also permits the attorney general, without a time limitation, to investigate and bring suit under the Connecticut Antitrust Act when he has reason to believe that an approved CA is not performing or providing services as described in its application or progress report.

MANAGED CARE ORGANIZATIONS

Under the bill, MCOs are required to negotiate in good faith with certified CAs. Failure to do so violates the Connecticut Unfair Trade Practices Act and also subjects violators to a civil fine of \$25,000 per day.

BACKGROUND

Antitrust

With limited exceptions, state and federal law prohibit restraint of any part of trade or commerce, including contracts intended to, or that have the effect of:

1. price fixing;
2. fixing, controlling, maintaining, limiting, or discontinuing the

production, manufacture, mining, sale, or supply of any part of trade or commerce;

3. allocating or dividing customers or markets, either functionally or geographically in any part of trade or commerce; or
4. refusing to deal or coercing, persuading, or inducing third parties to refuse to deal with another person.

Enforcement.

The attorney general is authorized to litigate state and federal antitrust cases. Persons, including consumers, are also entitled to file suit, and may recover treble damages for the injury to their business or property plus reasonable attorney's fees.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 27 Nay 7 (04/12/2011)